S-G Metal Industries, Inc. *and* Automotive Employees, Laundry Drivers and Helpers Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 31-CA-10403

June 8, 1981

DECISION AND ORDER

Upon a charge filed on September 4, 1980, by Automotive Employees, Laundry Drivers and Helpers Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on S-G Metal Industries, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 31, issued a complaint and notice of hearing on September 24, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 30, 1980, following a Board election in Case 31-RC-4675, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about August 22, 1980, and at all times thereafter Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. The complaint also alleges that commencing on or about August 22, 1980, and at all times thereafter, Respondent has refused and continues to refuse to supply the Union with information that is relevant to collective bargaining, although the Union has requested and is requesting it to do so. On October 1, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 2, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 5, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause Respondent essentially contests the validity of the Union's certification. Although Respondent admits that it has refused to bargain with the Union, and has refused to supply the Union with requested information, Respondent denies that it thereby violated Section 8(a)(5) and (1) of the Act. Specifically, Respodnent reasserts its claim that the Union engaged in objectionable conduct prior to the election and that a second election should be held. In addition, Respondent asserts that, pursuant to a Freedom of Information Act request, it has received and expects to receive information from the Acting Regional Director bearing upon the investigation of Respondent's objections to the election. It claims that such information gives rise to factual issues concerning the Union's alleged objectionable conduct thereby rendering summary judgment improper. In the Motion for Summary Judgment the General Counsel maintains that Respondent is attempting to relitigate the issues it raised in the related representation proceeding. We agree with the General Counsel.

Review of the record herein, including the record in Case 31-RC-4675, reveals that on February 11, 1980, after a hearing and the submission of a brief by Respondent, the Regional Director issued a Decision and Direction of Election. No request for review of the Decision and Direction of Election was filed. An election was conducted on March 12, 1980, which resulted in a vote of 35 to 14 in favor of the Union and 1 void and no challenged ballots. On March 18, 1980, Respondent filed timely objections to conduct affecting the results of the election. Respondent's objections alleged, *inter alia*, that: A union observer improperly engaged employees waiting to vote in conversation; supervisors participated in the union organization and election campaigns; partisan markings were made on Board documents; material misrepresentations were made to employees by the Union; employee signatures on authorization cards were fraudulently obtained; and employees were intimidated and coerced by the Union.

[1] Official notice is taken of the record in the representation proceeding, Case 31-RC-4675, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Baord's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F. Supp. 573 (D.C. Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Following an investigation in which all parties were allowed to submit evidence, the Regional Director issued a Supplemental Decision and Certification of Respresentative in Case 31-RC-4675, overruling Respondent's objections, finding that no material issues of fact requiring a hearing existed, and certifying the Union as the representative of all employees in the designated unit. Thereafter, Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Certification of Representative. By telegraphic order dated August 14, 1980, the Board denied Respondent's request for review. It appears, therefore, that Respondent is attempting to raise issues herein which were raised and determined in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[2]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence,[3] nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Respondent, a Missouri corporation, is engaged in the manufacture of aluminum ingot products at Gardena, California. In the course and conduct of its business operations, Respondent annually purchases and receives goods or services valued in excess of $50,000 directly from suppliers located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Automotive Employees, Laundry Drivers and Helpers Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, billet and deox department employees, shipping and receiving employees, truckdrivers, and leadmen employed by Respondent at its facility located at 1439 West 178th Street, Gardena, California, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

2. The certification

On March 12, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 31, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on May 30, 1980, and the Union continues to be such exclusive representative within the meaning of the Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about August 18, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 22, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

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[2] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[3] The purported "previously unavailable evidence" obtained by Respondent pursuant to its FOIA request relates only to the merits of the representation case proceeding and, in particular, the Regional Director's investigation thereof.

Accordingly, we find that Respondent has, since August 22, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. *The Request for Information and Respondent's Refusal*

Commencing on or about August 18, 1980, and at all times thereafter, the Union has requested that Respondent provide it with certain relevant and necessary information to assist the Union in carrying on collective bargaining. Commencing on or about August 22, 1980, and at all times thereafter to date, Respondent has refused and continues to refuse, to supply the requested information. All of the information sought by the Union is plainly relevant to collective-bargaining matters, would be useful to the Union, and directly relates to the statutory obligations and functions of the Union.[4]

Accordingly, we find that Respondent has, since August 22, 1980, and at all times thereafter, refused to provide the Union with information relevant to collective bargaining and necessary to the Union in carrying out its statutory obligations and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[4] The information requested by the Union is as follows: The name, address, classification, shift assignment, and starting time of each bargaining unit employee; the original date of hire and present hourly pay rate of each employee; the Employer's present vacation, sick leave, and funeral leave policies; a copy of any current health, medical, and hospitalization program including the total cost thereof, and amounts paid by the Employer and individuals and the number of employees in the unit not covered by such plan; the normal workweek and number of hours per day each employee is required to work; the Employer's lunch policy; a copy of the Employer's present rules; a list of each job in the unit; any bonus, profit sharing, or retirement program, the cost thereof, and a copy of the program and the number of employees covered; and any other terms and conditions of employment and/or the benefits which apply to employees in the unit.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement. We shall further order Respondent to supply the Union with the information relevant to collective-bargaining matters requested by the Union on or about August 18, 1980.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. S-G Metal Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Automotive Employees, Laundry Drivers and Helpers Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, billet and deox department employees, shipping and receiving employees, truckdrivers, and leadmen employed by S-G Metal Industries, Inc., at its facility located at 1439 West 178th Street, Gardena, California, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of that Act.

4. Since May 30, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 22, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about August 22, 1980, and at all times thereafter, to supply the Union with requested information relevant to collective-bargaining matters, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, and refusal to supply requested information, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, S-G Metal Industries, Inc., Gardena, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Automotive Employees, Laundry Drivers and Helpers Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, billet and deox department employees, shipping and receiving employees, truckdrivers, and leadmen employed by Respondent at its facility located at 1439 West 178th Street, Gardena, California, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(b) Refusing to supply the Union with requested information relevant to collective-bargaining matters.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreeement.

(b) Supply the Union with the information relevant to collective-bargaining matters requested by the Union on or about August 22, 1980.

(c) Post at its Gardena, California, facility copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours and other terms and conditions of employment with Automotive Employees, Laundry Drivers and Helpers Local 88, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to supply the Union with requested information relevant to collective-bargaining matters.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employ-

ees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, billet and deox department employees, shipping and receiving employees, truckdrivers, and leadmen employed by us at our facility located at 1429 West 178th Street, Gardena, California; excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL supply the Union with the information relevant to collective-bargaining matters requested by the Union on or about August 22, 1980.

S-G METAL INDUSTRIES, INC.